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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/758,265 | 01/16/2004 | Frederic Legrand | 05725.1297-00 | 5707 |
| 22852 | 7590 | 02/02/2006 | EXAMINER | |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413 | | | ELHILO, EISA B | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1751 | |

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,265

Applicant(s)

LEGRAND ET AL.

Examiner

Eisa B. Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/9/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-64 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 is indefinite because the claim recites the limitation “wherein the C8-C30 acid esters are chosen from saturated, linear and branched C3-C6 monoalcohols”. It is unclear to choose a compound having at least 8 carbons from compounds having 6 carbons. Correction or Explanation is required.

Claim Rejections - 35 USC § 103

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Legrand et al. (US 6,379,401 B1) in view of Lorant et al. (US 2003/0036490 A1).

Legrand et al. (US' 401 B1) teaches anhydrous composition for bleaching keratin fibers comprising alkalizing agents such as ammonium salts, alkaline earth metal silicates as claimed in

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claims 1-3 and 15 (see col. 6, lines 4-7), wherein the alkalizing agents are presented in the amounts of 4% and 12 % which within the claimed ranges as claimed in claims 16-19 (see col. 23, Example 2), peroxygenated salts such as alkali metal persulfates and potassium persulfates as claimed in claims 1 and 9-10 (see col. 6, lines 8-12) and wherein the peroxygenated salts are presented in the amounts of 30 to 60% which within the claimed ranges or overlapped with the claimed ranges as claimed in claims 11-14 (see col. 6, lines 14-16), organic liquid such as mineral oils and plant oils as claimed in claims 1 and 7 (see col. 6, lines 26-27), wherein the bleaching composition is obtained after mixing with the aqueous hydrogen peroxide and it can be in the form of an anhydrous bleaching cream containing pulverulent agents suspended or dispersed in an organic solvent (emulsion) which is similar to those as claimed claims 4-6 (see col. 20, lines 54-59 and col. 21, lines 19-24), wherein the bleaching composition further comprises water-soluble thickener such as guar gums in the amount of 0.03 to 30% as claimed in claims 21-22 (see col. 3, lines 40-48), surfactants such as anionic, nonionic, amphoteric or zwitterionic surfactants as claimed in claims 1 and 20 (see col. 18, line 60 and col. 19, lines 26-54), amphiphilic polymer forming hydrophobic chain as claimed in claims 23-24 (see col. 5, lines 16-20), wherein the amphiphilic polymer is presented in the amount of 0.03 to 30% as claimed in claim 25 (see col. 5, lines 64-67), wherein the anhydrous composition comprises 0% of water which is less than 1% and less than 0.5% as claimed in claims 26 and 27, wherein the anionic surfactant is alkyl sulfates and the nonionic surfactant is polyethoxylated fatty amines and amine oxides such as C10-C14 alkylamine oxide as claimed in claims 37-39 (see col. 18, line 66 and col. 19, lines 26-50), wherein the surfactants presented in the amounts of 0.1 to 30% as claimed in claims 40 and 41 (see col. 20, lines 50-53), wherein hydrogen peroxide in an

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emulsion has a weight of 2 to 12% which within or overlapped with the claimed ranges as claimed in claims 43-45 (see col. 21, lines 20-25), wherein the emulsion comprises fatty alcohols such as cetearyl alcohol as claimed in claim 42 (see col. 22, line 26), wherein the pH of the ready to use bleaching composition ranges from 8.5 to 11.5 which within the claimed ranges as claimed in claims 48-50 (see col. 21, lines 28-30), wherein the pH of hydrogen peroxide is 2 which within the claimed ranges as claimed in claims 46-47 (see col. 22, lines 25-30). Legrand et al. (US' 401 B1) also teaches a process for preparing a ready to use composition for bleaching hair a process for bleaching hair, which is similar to those claimed as claimed in claims 51-61 (see col. 20, lines 44-67 and col. 21, lines 1-27). Legrand et al. further teaches a kit comprising the composition as described above and which is similar to those claimed in claims 62-64 (see col. 21, lines 31-35).

The instant claims differ from the reference by reciting a bleaching composition comprising a copolymer having specific monomers. Further, the instant claims recite the percentage amounts of the organic liquid in the bleaching composition.

However, Legrand et al. (US' 401 B1) teaches and suggests the use of amphiphilic polymers in the bleaching composition. Legrand et al. also teaches and suggests the use of inert organic liquid such as mineral or plant oils in the bleaching composition (see col. 6, lines 26-27).

Lorant et al. (US' 490 A1) in analogous art of hair treating formulation, teaches a composition comprising amphiphilic polymers comprising at least one hydrophobic portion and at least one hydrophilic portion comprising at least one ethylenically unsaturated monomer containing a sulphonic grouping free or partially or totally neutralized form as claimed in claims 1 and 28-33 (see page 2, paragraphs, 0020 and 0033) wherein the amphiphilic polymer is

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presented in the amounts of 0.01 to 30% by weight which covered the claimed ranges as claimed in claims 34-36 (see page 4, paragraph, 0078). Lorant et al. (US' 490 A1) further, teaches hydrocarbon-based plant origin oils (see page 5, paragraph, 0094), fatty acid esters and mineral oils as claimed in claim 7 (see page 6, paragraphs 0095-0097) and wherein the fatty or oily phase may be range from 5 to 80% wherein the range covers the claimed range as claimed in claim 1 (see page 5, paragraph, 0091).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Legrand et al. (US' 401 B1) by incorporating the amphiphilic copolymer as taught by Lorant et al. (US' 490 A1) and to optimize the percentage amounts of the organic liquid in the bleaching composition to arrive at the claimed invention. Such a modification would be obvious because the primary reference of Legrand et al. (US' 401 B1) teaches the use of amphiphilic copolymers and organic liquids in the bleaching composition as described above. Lorant et al. (US' 490 A1) as a secondary reference clearly teaches and discloses the claimed species of the amphiphilic polymers and the percentage amounts of the organic liquid in a composition for treating hair (see abstract), and, thus, the person of the ordinary skill in the art would be motivated to incorporate the amphiphilic copolymer as taught by Lorant et al. in the bleaching composition of Legrand et al. with the reasonable expectation of success for stabilizing the bleaching composition and to optimize the amount of the organic liquid in the bleaching composition in order to get the maximum effective amounts of these ingredients in the bleaching composition, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

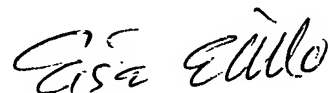
Conclusion

The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

January 30, 2006